IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No. S-59 of 2015

Before;
Mr. Justice Ali Haider 'Ada'.

Applicants:
1. Evacuee Trust Property Board, through its authorized officer

2. Administrator, Evacuee Trust Property (SZ).
Through Mr. Muhammad Habib Khan Advocate, associate of Muhammad Shamim Khan Advocate.

3. Secretary, Ministry of Religious Affairs.
Through Mr. Oshaq Ali Sangi, Assistant Attorney General

VERSUS

Respondent:
Amanullah son of Abdul Raheem, *through* Mr. Ghulam Dastagir A. Shahani Advocate.

Mr. Abdul Waris Bhutto, Assistant Advocate General.

Date of Hearing	:	*04.09.2026.*
Date of Decision	:	*04.09.2026.*
Date of Reasons	:	11.09.2026.

J U D G M E N T

Ali Haider 'Ada' J.- The Evacuee Trust Property Board **(ETPB)** has assailed the judgment and decree passed by the learned Senior Civil Judge-I, Shikarpur **(trial Court)**, and has also challenged the judgment rendered by the learned Additional District Judge-II, Shikarpur **(appellate Court)**, whereby the suit instituted by the respondent/plaintiff against the ETPB was decreed in his favour. Being aggrieved by the concurrent findings of the learned Courts below, the ETPB has preferred the present proceedings.

2. Briefly stated, the facts of the case are that shops bearing C.S. Nos. 15/382, measuring 23-1 square yards, and 15/383, measuring 19-4 square yards (**hereinafter referred to collectively as the "suit property"),** were declared

Evacuee Trust Property by the competent authority, namely, the Chairman, ETPB. Thereafter, the Chairman directed that the suit property be put to auction. The respondent/plaintiff participated in the auction proceedings and was declared the highest bidder, and his bid was duly recommended by the competent authority. However, subsequently, on 26.07.2005, the Assistant Administrator (Urban), ETPB, acting under the orders of the Chairman, issued a letter whereby the amount deposited by the respondent/plaintiff was directed to be refunded on the ground that the sale deed had not been executed in his favour. Feeling aggrieved by the said decision and particularly by the letter dated 26.07.2005, the respondent/plaintiff approached the Civil Court and instituted the suit, challenging the said letter and seeking appropriate relief against the ETPB.

3. After institution of the suit, the ETPB filed its written statement, wherein it was submitted that the sale case was under process and pending before the Federal Government. However, in the meantime, the ETPB, Lahore, decided that all pending sale cases be annulled and that the amounts deposited by the respective bidders be refunded. Thereafter, the learned trial Court framed the issues.

4. From the plaintiff's side, the evidence of the plaintiff and his witness was recorded. However, despite being afforded several opportunities, no one appeared on behalf of the ETPB to record evidence or produce any witness.

5. After hearing the parties, the learned trial Court passed judgment dated 30.09.2011 and decree dated 06.10.2011 in favour of the plaintiff. Through the said judgment and decree, the impugned letter was declared illegal, mala fide, and without lawful justification, with a further direction to the ETPB to execute the sale deed in favour of the plaintiff. The ETPB preferred an appeal against the judgment and decree of the learned trial Court. However, the learned appellate Court dismissed the appeal, primarily on the ground that it was barred by limitation. The appellate Court further observed that, even otherwise, there was no justification for interfering with the impugned judgment and decree passed by the learned trial Court. Consequently, the ETPB has filed the present civil revision application.

6. Learned counsel for the applicant/ETPB contended that both the learned Courts below allowed the suit of the plaintiff/respondent without considering the material aspect that the sale deed had never been executed and, therefore, the auction was rightly declared null and void by the Chairman, ETPB. He further contended that even otherwise, the Civil Court had no jurisdiction to entertain or adjudicate upon any issue relating to evacuee property. However, learned counsel candidly admitted that, despite filing the written statement, the ETPB did not enter the witness box, nor was any proper justification furnished for such failure. He, finally, prayed that the instant revision be allowed. Such stance was also adopted by both the learned Law Officers.

7. On the other hand, learned counsel for the respondent/plaintiff mainly contended that the plaintiff had been declared the successful bidder and, despite being under an obligation to execute the sale deed, the ETPB kept the plaintiff waiting on one pretext or another, whereas it was the prime duty of the vendor to execute the sale deed. He further contended that the plea of the ETPB that, since the sale deed had not been executed, the auction was liable to be cancelled and the deposited amount refunded, was wholly misconceived and amounted to a mala fide act on its part. According to learned counsel, the civil suit was, therefore, fully maintainable and the learned Courts below had rightly passed the judgments and decrees. In support of his contentions, learned counsel placed reliance upon the cases reported as 2021 CLC 468, PLD 2011 SC 126 and 1992 SCMR 1313.

8. Heard learned counsel for the parties and perused the record.

9. Now, the question that arises for determination is whether the plaintiff/respondent was justified in feeling aggrieved by the act of the ETPB, particularly when, despite having been declared the successful bidder and after the entire prescribed procedure had been adopted by the ETPB, the Chairman, ETPB, vide order dated 26.07.2005, directed that the sale amount be refunded, solely on the ground that the sale deed had not been executed. The grievance of the plaintiff/respondent is that the said action was taken by the ETPB with mala fide intent and in disregard of the procedure already completed in his favour.

10. At the very outset, it is necessary to examine the question of jurisdiction in the light of **Section 14** of the **Evacuee Trust Properties (Management and Disposal) Act, 1975 (Act, 1975)**, which provides a bar to the jurisdiction of the Civil Court. Therefore, before proceeding further, it would be appropriate to examine and understand the scope and applicability of Section 14 of the Act, which is reproduced hereunder:—

> *14. Bar of jurisdiction. Save as otherwise provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Federal Government or an officer appointed under this Act is empowered under this Act to determine, and no injunction, process or order shall be granted or issued by any Court or other authority in respect of any action taken or to be taken in exercise of any power conferred by or under this Act.*

11. Now, further, if any person is aggrieved by an order passed under the Act, a statutory remedy of appeal is available to such person in terms of **Section 16** of the Act,

1975. The said provision, therefore, also requires consideration in the present context and, for ready reference, Section 16 is reproduced hereunder:—

> *16. Appeal. . Save as otherwise provided in this Act, any person aggrieved by an order passed under this Act may, within fifteen days of the passing of such order, prefer an appeal.*
> *(a) in the case of an order passed by an Assistant Administrator or a Deputy Administrator, to the Administrator; and*
> *(b) in the case of an order passed by an administrator, not being an order passed in appeal by the Administrator confirming an order of an Assistant Administrator or a Deputy Administrator, to the Chairman.*

12. The question, therefore, is whether the action taken by the Chairman, ETPB, vide order dated 26.07.2005, was amenable to the appellate remedy contemplated under Section 16 of the Act, 1975. The impugned order itself makes it clear that the same was passed by the Chairman, ETPB, whereby the sale amount was directed to be refunded on the ground that the sale deed had not been executed. Section 16 provides an appellate forum against an order passed by the Assistant Administrator, Deputy Administrator or Administrator, as the case may be; however, the impugned order does not disclose that it was independently passed by any such officer in any proceedings. Rather, the Assistant Administrator merely conveyed to the plaintiff/respondent the decision already taken by the Chairman, ETPB. In such circumstances, the plaintiff/respondent cannot be non-suited on the ground that an alternative statutory remedy under Section 16 was available to him, when the very order impugned before the learned Civil Court was that of the Chairman, ETPB. Thus, the objection regarding exhaustion of the remedy under Section 14, read with Section 16 of the Act, 1975, does not appear to be attracted in the peculiar circumstances of the present case.

13. Nevertheless the matter does not end here. **Section 17** of the Act, 1975, further provides the mechanism governing the exercise of powers and remedies under the Act. The scope and effect of the said provision, therefore, also require consideration before determining the maintainability of the civil suit. So for ready refernce the same is read as under:-

> *17. Revision. The Federal Government may at any time, of its own, motion or otherwise, call for the record of any case or proceedings under this Act, which is pending or in which the Chairman, an Administrator, a Deputy Administrator or an Assistant Administrator has passed an order, for the purpose of satisfying itself as to the correctness, legality or propriety of such an order, and may pass such order in relation thereto as the Federal Government thinks fit: Provided that the record of any case or proceedings in which the Chairman, an Administrator, a Deputy Administrator or an Assistant Administrator has passed an order shall not be called for under this section on the application of any aggrieved person made after the expiration of fifteen days from the date of such order.*

14. Even otherwise, such remedy could not have been effectively availed by the plaintiff/respondent if his case is examined in the light of the stance taken by the ETPB itself in its written statement. It was categorically stated therein that the sale deed had not been executed in favour of the plaintiff/respondent because approval of the Federal Government was still awaited. This admission of the ETPB is material, as it clearly indicates that the execution of the sale deed was subject to the approval. Thus, the power and role conferred upon the Federal Government under Section 17 assume significance in the present case. The plaintiff/respondent, being aggrieved by the non-execution of the sale deed on the very ground that approval of the Federal Government was awaited, was consequently placed in a situation where the barrier to completion of the transaction was attributable to the statutory process itself. The ETPB, having taken such a specific stance in its written statement, cannot subsequently seek to rely upon the non-execution of the sale deed, which according to its own version was occasioned by the pending approval of the Federal Government, and then challenge the maintainability of the civil suit on the basis of the statutory remedy. In such circumstances, the revision cannot be maintained against the consequences of its own stated position and action.

15. Once mala fide and malice are specifically alleged, the person raising such allegations must be afforded an opportunity to establish the same through cogent and convincing material. In the present case, the record, when examined in its entirety, further reveals that the Chairman, ETPB, being the final authority at the appellate stage, himself passed the order dated 26.07.2005, whereby the plaintiff/respondent was aggrieved. Thus, the very order which furnished the cause of action to the plaintiff/respondent was passed by the Chairman, ETPB, leaving no further effective statutory remedy before any superior authority within the departmental hierarchy. Consequently, the cause of action had fully accrued to the plaintiff/respondent to invoke the jurisdiction of the Civil Court. In this regard, reliance is placed upon the case of **GUL SHAH versus Hafiz GHULAM MUHAMMAD, 2009 SCMR 1058,** wherein it was clearly observed that although the jurisdiction of the Civil Court was barred under the Evacuee Trust Property (Management and Disposal) Act, 1975, in ordinary cases, yet where mala fide and malice were attributed to the functionaries of the Government, the Civil Court was the Court of ultimate jurisdiction and could adjudicate the matter in accordance with law. Further guidance may also be drawn from the cases of **SAMI ULLAH KHAN versus Sheikh TAJ MUHAMMAD, PLD 2015 Peshawar 175; GHULAM HURR and 2 others versus DISTRICT COLLECTOR BHAKKAR and others, 2020 CLC Note 23; MUHAMMAD JAMIL ASGHAR versus**

IMPROVEMENT TRUST, PLD 1965 SC 698; PAKISTAN TRANSPORT COMPANY LTD. versus WALAYAT KHAN through Legal Heirs, 2002 SCMR 1470; as well as the case reported in NLR 1993 UC 170.

16. Now, coming to the question as to what mechanism is available for the disposal of evacuee trust properties, in this regard, the **Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977** is required to be examined. The said Scheme was framed in exercise of the powers conferred under **Section 30** of the Evacuee Trust Properties (Management and Disposal) Act, 1975, and thus provides the statutory mechanism governing the management and disposal of evacuee trust properties. **Chapter IV** of the said Scheme deals with **"Sale of Evacuee Trust Properties"** and provides the mechanism and procedure for their disposal. In particular, paragraph 8 prescribes the manner in which such properties may be disposed of. For ready reference, paragraph 8 is reproduced as under:—

> *8. The District Officer concerned shall cause to be prepared a list of un-economic or otherwise difficult to manage properties which shall be placed before the Board or its delegatee for decision to auction for long lease or for development or to develop the property at the Board's expense or to dispose of "Provided that the Board may require the Chairman to arrange periodic survey of all the urban properties to determine their economic viability and utilization including disposal as the best course of an act of management.*
>
> *Provided further that the Chairman may, with the prior approval of the Board, procure minimum necessary logistics including office equipment, etc, and hire services of such number of suitable qualified professionals on contract for such period as necessary to conduct speedy survey and auction if such properties, if so deemed necessary".*
>
> *The Board or its delegatee may accord approval to the sale of urban evacuee trust property, i.e, house, shop, plot or land, which is uneconomic or otherwise difficult to manage, through open public*

> *or by calling tenders subsequent to wide publicity through mass media or in such cases where litigation has prolonged exceeding five years, through negotiation, if such sale appears to be the best course, as an act of good management, under the circumstances. The reserve price of the land shall be fixed at average of the prevailing market rate and the price fixed by the Deputy Commissioner or Collector of the District for the purpose of stamp-duty*

17. Furthermore, in continuation thereof, paragraph **8-B** further clarifies the position. The same is, therefore, reproduced as under:—

> ***8B** The Board or its delegatee may, at its discretion, accord approval to the sale of an evacuee trust property including house, shop, plot or land, which has been declared as trust, as a result of judicial verdict under sections 8 & 10 of the Evacuee Trust Properties (Management & Disposal) Act, 1975 (XIII of 1975), and is declared uneconomic due to reasons that the possession of the above said property could not be taken over by the Board due to further litigation and that the Board has never earned a penny as revenue from the said property, through negotiation with the occupants, irrespective of the period of litigation, if such sale appears to be the best course as an act of good management under the circumstances. The reserve sale price of the property shall be fixed at average of the prevailing market rate and price fixed by the District Revenue Officer of the District for the purpose of stamp duty.";*

18. Thus, it is the primary duty of the Board to accord approval and to take further necessary steps in accordance with the prescribed procedure. The Chairman being the head of the Board and the competent authority, it is the responsibility of the ETPB, through its competent authority, to act in accordance with the prescribed manner for confirmation of the sale, once the sale has attained finality on the part of the plaintiff.

19. Furthermore, insofar as the legal requirements relating to the sale are concerned, **Sections 54 and 55** of the **Transfer of Property Act, 1882,** are also relevant to the matter. For ready reference, the same are reproduced as under:—

> ***54. "Sale" defined**.– "Sale" is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.*
>
> *Sale how made.– Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*
>
> *In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*
>
> *Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs in possession of the property.*
>
> *Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.*
>
> *It does not, of itself, create any interest in or charge on such property.*
>
> ***55. Rights and liabilities of buyer and seller**.– In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:-*
>
> *(1) The seller is bound–*
>
> *(a) to disclose to buyer any material defect in the property 2[or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;*
>
> *(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;*
>
> *(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;*
>
> *(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property*

when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the mean time, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said *documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.*

(4) The seller is entitled–

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer 1[any transferee without consideration or any transferee with notice of the non- payment], for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part 2[from the date on which possession has been delivered].

(5) The buyer is bound–

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain, out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest-thereon afterwards accruing due.

(6) The buyer is entitled–

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against

the seller and all persons claiming under him, 1[* *] to the extent of the seller's interest in the property for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.*

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

20. Thus, the plaintiff's liability to make the balance payment was dependent upon the applicant/ETPB, being the vendor, first fulfilling the corresponding obligations, including execution of the sale deed and according the requisite approval. Such obligations were to be performed by the ETPB in accordance with the prescribed procedure. In the event that the ETPB failed to perform the obligations resting upon it, no default could legitimately be attributed to the plaintiff, nor could such failure constitute a valid ground for cancellation of the sale process lawfully pursued by the plaintiff. The principle governing such a situation may further be guided by the judgment of the Hon'ble Supreme Court in **Zeeshan Pervez (Late) v. Muhammad Nasir, 2025 SCMR 495**.

21. Now, coming to the role of the ETPB, being a public authority and statutory functionary, it is under an obligation to act justly, reasonably, fairly and in accordance with law. In this regard, **Section 24-A** of the **General Clauses Act** embodies the fundamental principle that an authority exercising statutory or administrative powers is required to exercise such powers reasonably, fairly and justly, and to act in accordance with the law. For ready reference, the relevant provision is reproduced hereunder:—

[24A. Exercise of power under enactments.*—(1) Where, by or under any enactment, a power to make any*

> *order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.*
>
> *(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially.*

22. The said provision obligates the executive authorities to exercise statutory powers in a fair, reasonable, and transparent manner and to provide reasons for their decisions. Reliance may be placed upon the cases of **Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary, Ministry of Finance and others (2015 SCMR 630), Muhammad Ashraf Tiwana and others v. Pakistan and others (2013 SCMR 1159) and Habibullah Bhutto v. Collector Customs and another (2011 SCMR 1504)**.

23. Furthermore, where the ETPB have failed to appear in the witness-box, the scope and evidentiary value of their written statement require consideration. Consequently, the pleas raised by the ETPB in their written statement could not be relied upon in the absence of supporting evidence from the ETPB themselves. The above principle finds support from the judgments in **Mst. Shamim Bibi alias Seema Bibi v. Zakir Hussain, 2026 YLR 1681; Faiz Muhammad v. Province of Sindh and others, 2024 MLD 644; Safdar Hussain Jatt v. Zafar Ali Arain, 2021 MLD 624; Messrs Society Oil Dealers, Karachi v. District Judge, Karachi and another, 2003 MLD 205; and K.A.H. Ghori v. Khan Zafar Masood and another, PLD 1988 Karachi 460.**

24. So far as the scope of revisional jurisdiction is concerned, it is to be borne in mind that this Court, while exercising jurisdiction under Section 115, C.P.C., ordinarily does not interfere with concurrent findings of fact recorded by the Courts below. In this regard, reliance may be placed upon the judgment of the Hon'ble Supreme Court in **Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others, 2020 SCMR 2046**.

25. For the foregoing reasons and discussion, no case is made out for interference with the concurrent findings and decisions of the Courts below. Consequently, the instant Civil Revision Application is hereby dismissed. These are the detailed reasons for the short order already announced.

JUDGE